

HOUSE BILL 3164
By Windle

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 29; Title 63, Chapter 6 and Title 63,
Chapter 9, relative to the practice of naturopathy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-6-205, is amended by deleting the section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 9, is amended by adding the following as a new Part 2:

Section 63-9-201. As used in this part:

(1) "Acupuncture" means the traditional Chinese therapeutic technique of treating specific areas of the human body, known as acupuncture points or meridians, by puncturing the body with fine needles or applying electricity, heat, or both to the body.

(2) "Drug" shall have the same meaning as in § 39-17-402.

(3) "Homeopathic preparations" means medicines prepared according to the United States and internationally accepted homeopathic pharmacopoeias.

(4) "License" means a license that the state board of naturopathic medicine issues under § 63-9-211 or renews under § 63-9-218 authorizing an individual to practice naturopathic medicine.

(5) "Minor surgery" means the use of operative, electrical, or other methods for the surgical repair and care of superficial lacerations, abrasions, and lesions; the removal of foreign bodies located in the superficial tissues; and the use of antiseptics and local anesthetics in connection with these methods.

(6) "Natural antibiotics" means antimicrobial, antifungal, antiviral, and antiprotozoal agents that are naturally occurring substances, or manufactured substances that are chemically identical to those naturally occurring substances.

(7) "Natural medicine" means food, food extracts, vitamins, minerals, essential oils, enzymes, digestive aids, nutraceuticals, glandular substances, plant substances, herbal preparations, homeopathic preparations, oligotherapeutic preparations, gemmotherapeutic preparations, and natural antibiotics.

(8) "Naturopathic joint mobilization and neuromuscular re-education" means the manually administered, mechanical treatment of body structures or tissues, in accordance with naturopathic principles, for the purpose of restoring normal physiological functions of the body by normalizing and balancing the musculoskeletal system of the body.

(9) "Naturopathic medicine" means a system of primary health care practiced by naturopathic physicians, including prevention, diagnosis, treatment, and management of human health conditions, injuries, and diseases that uses education, counseling, biofeedback, acupuncture, natural medicine, topical medicine, naturopathic physical medicine, therapeutic devices, chelation, barrier devices for contraception, minor surgery, immunizations, nutritional assessment and counseling, hypnotherapy, joint mobilization and neuromuscular re-education, naprapathy, and dietary therapy to support and stimulate the patient's intrinsic healing processes.

(10) "Naturopathic physical medicine" means the therapeutic use of the physical, chemical, or other properties of air, water, heat, cold, sound, light, and electromagnetic nonionizing radiation and of the physical modalities of electrotherapy, diathermy, ultraviolet light, infrared light, ultrasound, hydrotherapy, massage, joint mobilization and neuromuscular re-education, reflex therapy, and therapeutic exercise.

(11) "Naturopathic physician" means an individual who holds a valid license.

(12) "Parturition" means childbirth.

(13) "Topical medicine" means topical analgesics, anesthetics, scabicides, antifungals, compounded preparations, antibacterials, antiseptics, and antivirals.

Section 63-9-202.

(a) Effective one (1) year after the effective date of this part, no person shall do the following without a valid license:

(1) Except as provided in § 63-9-203, practice naturopathic medicine;

(2) Hold the person's self out in any manner as a doctor of naturopathic medicine or doctor of naturopathy, including using either of the following:

(A) The terms "doctor of naturopathy," "naturopath," "doctor of naturopathic medicine," "N.M.D.," "N.D.," or other equivalent words or initials in connection with that person's own name; or

(B) Any sign, advertisement, card, letterhead, circular, or other writing document, or design, the evident purpose of which is to induce others to believe that person holds a valid license.

(b) For purposes of subsection (a), a person's use of or display of any such terms, initials, signs, advertisements, letterhead, circulars, or other writing document or design, including diplomas or licenses, the evident purpose of which is to induce others to believe that person holds a valid license, is prima-facie evidence of the intent of such person to represent the person as engaged in or entitled to engage in the practice of naturopathic medicine.

Section 63-9-203.

(a) As used in this section:

(1) "License" means a license, permit, card, or other authority issued or conferred by a licensing agency by authority of which the license holder has the privilege to engage in a profession, occupation, or occupational activity over which the statute gives the licensing agency jurisdiction.

(2) "Licensing agency" means the state board of naturopathic medicine.

(b) Subdivision (a)(1) of § 63-9-202 does not apply to either of the following:

(1) An individual engaging in the scope of practice for which the individual holds a valid license;

(2) An individual performing a task as part of a course of instruction leading to a degree that the individual needs to obtain a license if the course of instruction is provided by an entity operating legally in the state.

Section 63-9-204.

(a) There is hereby created the state board of naturopathic medicine consisting of seven (7) members appointed by the governor. The governor shall make the initial appointments not later than sixty (60) days after the effective date of this part.

(b) Five (5) members of the board shall be persons who hold the degree of doctor of naturopathy or doctor of naturopathic medicine from a school or college authorized by a state or federal government to grant those degrees and, except for those members appointed before the board begins issuing licenses to practice naturopathic medicine, hold a valid license. Of the initial members who hold the degree of doctor of naturopathy or doctor of naturopathic medicine, two (2) shall be appointed for two-year terms, one (1) shall be appointed for a three-year term, one shall be appointed for a four-year term, and one (1) shall be appointed for a five-year term. Thereafter, the members who hold the degree of doctor of naturopathy or doctor of naturopathic medicine shall be appointed to five-year terms. Two (2) members of the board shall represent the interests

of consumers and shall not be members of, or associated with, any health care provider, profession, school, or regulating agency. The consumer members shall be appointed to five-year terms.

(c) Each member of the board shall hold office from the date of appointment until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring before the expiration of a term shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty (60) days has elapsed, whichever occurs first.

Section 63-9-205.

(a) The state board of naturopathic medicine shall meet each June and December and at times and places as the board may direct and provide in its rules. Four (4) members of the board shall constitute a quorum. No action of the board is valid without a concurrence of a quorum.

(b) The board shall elect a chair, secretary, and supervising member from among its members. The term of office of these positions is three (3) years.

(c) The board shall keep a written record of its meetings and proceedings and any records and minutes necessary to fulfill the duties established by this chapter and rules adopted under it.

(d) The board may hire staff as needed.

(e) The board shall adopt a seal.

Section 63-9-206. Each member of the state board of naturopathic medicine shall receive the amount of fifty dollars (\$50.00) for each day employed in the discharge of official duties as a board member. Each member shall be reimbursed for necessary and actual expenses incurred in the performance of official duties as a board member in accordance with

the comprehensive travel regulations promulgated by the department of finance and administration.

Section 63-9-207. In the absence of fraud or bad faith, neither the state board of naturopathic medicine nor any current or former member, agent, representative, or employee of the board shall be held liable for damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to this part. If a current or former member, agent, representative, or employee requests that the state defend against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, and if the request is made in writing at a reasonable time before trial and the person requesting defense cooperates in good faith in the defense of the claim or action, the state shall provide and pay for such defense and shall pay any resulting judgment, compromise, or settlement. At no time shall the state pay that part of a claim or judgment that is for punitive or exemplary damages.

Section 63-9-208. The division of health-related boards of the department of health shall provide legal counsel to the state board of naturopathic medicine.

Section 63-9-209.

(a) Except as provided in subsection (b), all moneys received by the state board of naturopathic medicine shall be deposited into the state treasury to the credit of the naturopathic medicine fund which is hereby created. A receipt for monies received by the board shall be filed with the secretary of the board in the office of the state treasurer.

(b) The payment of any fee to the board shall be made in any manner acceptable to the board.

Section 63-9-210. The state board of naturopathic medicine shall adopt rules in accordance with title 4, chapter 5, to establish or specify all of the following:

(1) Additional information to be included in an affidavit presented to the board under § 63-9-211 to obtain a license;

(2) The license issuance fee under § 63-9-211;

(3) The examination fee under §§ 63-9-213 and 63-9-214;

(4) Remedial training an individual must complete to retake the examination pursuant to § 63-9-214 if the individual fails to score at least seventy percent (70%) after three (3) consecutive tries;

(5) The renewal fee under § 63-9-218;

(6) Additional information to be included in the renewal form for a license under § 63-9-219;

(7) The number of hours of continuing naturopathic medical education a naturopathic physician must complete for the purpose of § 63-9-220(a)(2). The number of hours shall be a pro rata reduction by month of the number of hours of continuing naturopathic medical education the naturopathic physician would have to meet under § 63-9-220(a)(1), § 63-9-220(a)(2) did not apply to the naturopathic physician.

(8) The restoration fee under § 63-9-222;

(9) Continuing education requirements for restoring a license under § 63-9-222;

(10) For the purpose of § 63-9-231, the formulary specifying the drugs, dangerous drugs, homeopathic preparations, natural antibiotics, natural medicines, topical medicines, and therapeutic devices that a naturopathic physician may prescribe or furnish;

(11) For the purpose of § 63-9-231, the training requirements to prescribe and furnish drugs, dangerous drugs, homeopathic preparations, natural antibiotics, natural medicines, topical medicines, and therapeutic devices specified on the formulary established pursuant to subdivision (10);

(12) For the purpose of § 63-9-232, the training requirements to be, and the practice parameters of, naturopathic physician assistants;

(13) For the purpose of § 63-9-238, the extent to which a naturopathic physician may render naturopathic medicine to another naturopathic physician.

Section 63-9-211. On the affirmative vote of not fewer than four members of the state board of naturopathic medicine and subject to §§ 63-9-236 and 63-9-237, the board shall issue a license to practice naturopathic medicine to an individual who meets all of the following requirements:

(1) Submits to the board a properly completed application for a license prescribed and furnished by the board;

(2) Is at least eighteen (18) years of age and of good moral character;

(3) Has not pleaded guilty to or been convicted of a violation of § 63-9-202;

(4) Presents to the board a diploma evidencing either of the following:

(A) That the individual earned the degree of doctor of naturopathic medicine or doctor of naturopathy from any of the following:

(i) An institution that held, at the time the individual earned the degree from the institution, an approved program from an institution of the University of Tennessee system or the state university and community college system of Tennessee; or

(ii) A program that held, at the time the individual earned the degree from the program, an appropriate program authorization from the Tennessee higher education commission;

(B) That the individual earned the degree of doctor of naturopathic medicine, doctor of naturopathy, or an equivalent degree approved by the board from an institution or program in another state, province, or country that, at the

time the individual earned the degree from the institution or program, was authorized to confer the degree by the state, province, or country in which the institution or program was located;

(5) Presents to the board an affidavit specifying all of the following:

(A) The individual's age and residence;

(B) That the individual is the person named in the diploma presented under subdivision (4) and the lawful possessor thereof;

(C) The name and address of the institution or program from which the individual received the diploma;

(D) The time spent in the study of naturopathic medicine; and

(E) Any other information the board requires pursuant to rules adopted under § 63-9-210;

(6) Except as provided in §§ 63-9-215 and 63-9-216, takes and scores not less than seventy percent (70%) on the examination administered by the board pursuant to § 63-9-213; and

(7) Pays the license issuance fee applicable to the individual as determined in accordance with rules adopted under § 63-9-210.

Section 63-9-212. The chair and secretary of the state board of naturopathic medicine shall sign each license. Each license shall be attested by its seal.

Section 63-9-213.

(a) The state board of naturopathic medicine shall procure, administer, and grade an examination for individuals seeking a license to practice naturopathic medicine. The examination shall cover subjects pertinent to naturopathic medicine educational standards that are current at the time the examination is administered and are deemed appropriate by the board. The board shall administer the first examination not later than

six (6) months after the effective date of this section and not less than twice a year thereafter.

(b) Subject to § 63-9-214, the board shall admit to the examination individuals who meet the requirements of § 63-9-211(1)-(5) and pay the examination fee established by rules adopted under § 63-9-210.

Section 63-9-214. An individual who fails to score at least seventy percent (70%) on the examination administered by the state board of naturopathic medicine under § 63-9-213 may retake the examination on resubmission of an application for a license pursuant to § 63-9-211(1) and repayment of the examination fee established by rules adopted under § 63-9-210. However, an individual who fails to score at least seventy percent (70%) on the examination after three (3) consecutive tries may not retake the examination until the individual also completes thirty (30) hours of remedial training in accordance with rules adopted under § 63-9-210 and presents to the board documentation satisfactory to the board confirming the completion of the training.

Section 63-9-215. Until one (1) year after the effective date of this part and on the affirmative vote of not fewer than four (4) members of the state board of naturopathic medicine, the board shall waive the requirement of § 63-9-211(6) for an individual who meets all of the other requirements of that section and resides in this state on the effective date of this part.

Section 63-9-216. On the affirmative vote of not fewer than four (4) members of the state board of naturopathic medicine, the board shall waive the requirement of § 63-9-211(6) for an individual who wishes to remove to this state and is authorized to practice naturopathic medicine in another state, province, or country that the board determines has authorization standards comparable to the requirements of § 63-9-211.

Section 63-9-217. An initial license shall expire two (2) years after the date it is issued unless it is renewed under § 63-9-218 before that date. A renewed license shall expire two (2)

years after the date it is renewed unless it is renewed again under § 63-9-218 before that date.
A license may be suspended or revoked pursuant to this part before its expiration date.

Section 63-9-218. Subject to §§ 63-9-236 and 63-9-237, the board shall establish a renewal procedure by rule and shall renew a license if the naturopathic physician holding the license does all of the following:

- (1) Submits to the board a properly completed renewal application form;
- (2) Pays the renewal fee established in rules adopted under § 63-9-210;
- (3) Satisfies the continuing education requirements established under § 63-9-220;
- (4) If the naturopathic physician has not practiced or taught naturopathic medicine for three (3) or more years at the time of application for renewal, complies with § 63-9-223 unless either of the following is the case:
 - (A) The board waives this requirement for the naturopathic physician; or
 - (B) The naturopathic physician provides the board evidence satisfactory to the board that the reason the naturopathic physician did not practice or teach naturopathic medicine during that period is directly related to the pursuit of education or research in naturopathic medicine.

Section 63-9-219. The renewal application form for licenses of authority shall contain proper spaces for all of the following:

- (1) The naturopathic physician's full name and principal practice;
- (2) The naturopathic physician's residence address;
- (3) The number of the naturopathic physician's license;
- (4) If the naturopathic physician does not currently practice or teach naturopathic medicine, the date that the naturopathic physician last practiced or taught naturopathic medicine;

(5) A statement that the naturopathic physician has fulfilled the continuing naturopathic medical education requirement of § 63-9-220;

(6) A statement that the naturopathic physician has not been found guilty of, or entered a plea of guilty or no contest to, any criminal offense that constitutes grounds for refusing to renew the license under § 63-9-237;

(7) Any other information the board specifies in rules adopted under § 63-9-210 as necessary for the board to be able to renew the license; and

(8) The naturopathic physician's signature.

Section 63-9-220.

(a) Each naturopathic physician shall complete the following number of hours of continuing naturopathic medical education as a condition of renewal of a license:

(1) Except as provided in subdivision (a)(2), thirty (30) hours;

(2) If the naturopathic physician was disabled due to illness or accident or absent from the country during the period beginning after the date the license was issued or, if the license was previously renewed, the date it was most recently renewed, and ending on the date the naturopathic physician submits the renewal application for the license, the number of hours of continuing naturopathic medical education specified in rules adopted under § 63-9-210.

(b) A naturopathic physician shall complete the number of hours of continuing naturopathic medical education required by subdivision (a) before the date the naturopathic physician submits the renewed application for the license.

Section 63-9-221. For the purpose of § 63-9-220, the state board of naturopathic medicine shall give each naturopathic physician sufficient choice of continuing naturopathic medical education programs that are relevant to the naturopathic physician's practice.

Section 63-9-222. An individual whose license has expired may apply to the state board of naturopathic medicine to have the license restored. The board shall restore the license if the individual does all of the following:

- (1) Pays the restoration fee established in rules adopted under § 63-9-210;
- (2) Satisfies the continuing education requirements established in rules adopted under § 63-9-210 for restoring the license;
- (3) If the individual has not practiced or taught naturopathic medicine for three (3) or more years at the time of application for the restoration, complies with § 63-9-223 unless either of the following is the case:

(A) The board waives this requirement for the individual;

(B) The individual provides the board evidence satisfactory to the board that the reason the individual did not practice or teach naturopathic medicine during that period is directly related to the pursuit of education or research in naturopathic medicine.

Section 63-9-223. To meet the requirement of § 63-9-218(4) or § 63-9-222(3), an individual shall complete a post graduate training program approved by the state board of naturopathic medicine and pass an oral or written examination, or both, demonstrating the individual's present fitness to practice naturopathic medicine.

Section 63-9-224. The state board of naturopathic medicine may limit the extent, scope, or type of practice of a naturopathic physician who is required to meet the requirement of § 63-9-218(4) or § 63-9-222(3) as a condition of having the naturopathic physician's license restored or renewed.

Section 63-9-225. The state board of naturopathic medicine shall maintain a registry listing each naturopathic physician holding a valid license.

Section 63-9-226. On the first day of November of each even-numbered year, or as soon as practicable thereafter, the state board of naturopathic medicine shall publish a printed list of each naturopathic physician included on the registry maintained under § 63-9-225. On request, the board shall cause the list to be mailed to a naturopathic physician.

Section 63-9-227. A license signed by the secretary, under the official seal of the state board of naturopathic medicine to the effect that it appears from the records of the board that no license has been issued to an individual specified therein, or that a license, if issued, has been revoked or suspended or has expired, shall be received as prima-facie evidence of the record in any court or before any officer of the state.

Section 63-9-228. A naturopathic physician may use the title "doctor," "physician," "naturopathic physician," "naturopathic doctor," "naturopath," "doctor of naturopathic medicine," or "doctor of naturopathy," or use the terms "N.D." or "N.M.D." to show that the naturopathic physician is a practitioner of naturopathic medicine. The naturopathic physician's license shall be prominently displayed in the naturopathic physician's office or the place where the major portion of the naturopathic physician's practice is conducted.

Section 63-9-229. A naturopathic physician is a "physician" who performs "medical services" for the purposes of title 50, chapter 6, and shall receive payment or reimbursement as provided under that chapter.

Section 63-9-230. A naturopathic physician may use for preventive and therapeutic purposes naturopathic medicine and any therapeutic or clinical modalities taught at any naturopathic medical college operating legally in the state and for diagnostic purposes physical and orificial examinations, x-rays, electrocardiograms, EAV testing, ultrasound, phlebotomy, clinical laboratory tests and examinations, physiological function tests, and any diagnostic procedures commonly used by physicians in general practice.

Section 63-9-231.

(a) A naturopathic physician may, subject to subsection (b), prescribe or furnish a drug, dangerous drug, homeopathic preparation, natural antibiotic, natural medicine, topical medicine, or therapeutic device that is included in the types of drugs, dangerous drugs, homeopathic preparations, natural antibiotics, natural medicines, topical medicines, or therapeutic devices listed on the formulary established in rules adopted under § 63-9-210.

(b) To be authorized to prescribe or furnish in accordance with subsection (a), a naturopathic physician shall complete the training established in rules adopted under § 63-9-210.

Section 63-9-232. A naturopathic physician may use an assistant to assist in the naturopathic physician's practice of naturopathic medicine if the assistant meets the training requirements for, and complies with the practice parameters of, naturopathic physician assistants specified in rules adopted under § 63-9-210.

Section 63-9-233. No naturopathic physician shall do any of the following:

- (1) Engage in the practice of parturition;
- (2) Perform any procedure, or practice any limited modality of naturopathy for which the naturopathic physician has not been trained;
- (3) Exceed the limitation on the extent, scope, or type of practice imposed on the naturopathic physician pursuant to § 63-9-224 or 63-9-225;
- (4) Refer a patient to a person for a designated health service if the naturopathic physician, or a member of the naturopathic physician's immediate family, has either of the following financial relationships with the person:
 - (A) An ownership or investment interest in the person whether through debt, equity, or other means;

(B) Any compensation arrangement involving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

Section 63-9-234.

(a) No person to which a naturopathic physician has referred a patient in violation of § 63-9-233(4) shall bill the patient, any third-party payer, any governmental health care program, or any other person or governmental entity for the designated health service rendered pursuant to the referral.

(b) No person shall knowingly enter into an arrangement or scheme, including a cross-referral arrangement, that has a principal purpose of assuring referrals by a naturopathic physician to a particular person that, if the naturopathic physician directly made referrals to such person, would violate § 63-9-233(4).

Section 63-9-235. On receipt of a notice pursuant to § 36-5-702, the state board of naturopathic medicine shall comply with the provisions of title 36, chapter 5, part 7, with respect to a license issued pursuant to this part.

Section 63-9-236. On the affirmative vote of not less than four (4) of its members, the state board of naturopathic medicine may refuse to issue or renew a license or revoke a license if the board determines that the applicant or license holder did either of the following:

(1) Committed fraud in passing the examination administered under § 63-9-213;

or

(2) Committed fraud, misrepresentation, or deception in applying for the issuance or renewal license.

Section 63-9-237.

(a) On the affirmative vote of not less than four (4) of its members, the state board of naturopathic medicine may take any of the following actions when authorized by subsection (b):

- (1) Refuse to issue a license;
- (2) Revoke or suspend a license;
- (3) Refuse to renew a license;
- (4) Limit the extent, scope, or type of practice of a naturopathic physician;
- or
- (5) Reprimand or place on probation a naturopathic physician.

(b) The board may take action under subsection (a) against an applicant for a license or a naturopathic physician if any of the following is the case:

(1) In the case of an applicant, the applicant does not meet the requirements for the license;

(2) In the case of an applicant or a naturopathic physician, any of the following is the case:

(A) The applicant or naturopathic physician has pled guilty to, or been found guilty of, a felony;

(B) The applicant or naturopathic physician has pled guilty to, or been found guilty of, a violation of a federal or state law regulating the possession, distribution, or use of a controlled substance as defined in § 39-17-402;

(C) The applicant or naturopathic physician has had a health care license or license denied, revoked, or suspended in another state, province, or country on grounds for which the board may deny, revoke, or suspend a license;

(D) The applicant or naturopathic physician is unable to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the board by reason of either of the following:

(i) Mental or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills; or

(ii) Habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to practice; or

(3) In the case of a naturopathic physician, the naturopathic physician does any of the following:

(A) Violates this part or a rule adopted under this part;

(B) Pleads guilty to, or is found guilty of, a misdemeanor committed in the course of the practice of naturopathic medicine;

(C) Permits the naturopathic physician's name or license to be used by a person when the naturopathic physician is not actually directing the treatment given;

(D) Willfully betrays a professional confidence or intentionally violates a privileged communication, except where required by law. This subdivision (D) does not prevent the members of the board from the full and free exchange of information with the agencies of other jurisdictions or countries, or with any professional naturopathic medical association, organization, or society, as determined by the board;

(E) Fails to use universal blood and body fluid precautions;

(F) Violates the conditions of limitations placed by the board upon the individual's license;

(G) Departs from, or fails to conform to, accepted and prevailing standards of naturopathic medicine approved by the board where actual injury to a patient is established. In approving accepted and prevailing

standards of naturopathic medicine, the board may consider standards of naturopathic examining boards in other jurisdictions or countries, or it may use standards established by any naturopathic medical association, organization, or society. The board shall not use standards of medical professions other than naturopathic medicine;

(H) Solicits patients;

(I) Publishes a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived;

(J) Except as provided in § 63-9-238, waives the payment of all or a part of a deductible or co-payment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the naturopathic physician's services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from the naturopathic physician; or

(K) Except as provided in § 63-9-238, advertises that the naturopathic physician will waive the payment of all or any part of a deductible or co-payment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the naturopathic physician's services, would otherwise be required to pay.

Section 63-9-238.

(a) The state board of naturopathic medicine may not take action against a naturopathic physician under § 63-9-237 by reason of § 63-9-237(b)(3)(J) or (K) if the naturopathic physician waives deductibles or co-payments as follows:

(1) In compliance with a health insurance or health care policy, contract, or plan that expressly allows the waiver and with the full knowledge and consent of the policy, contract, or plan purchaser, payer, and third-party administrator; or

(2) For naturopathic medicine rendered to another naturopathic physician to the extent allowed by rules adopted under § 63-9-210.

(b) A naturopathic physician who waives deductibles or co-payments pursuant to subdivision (a)(1) shall provide the board, on request, documentation showing that the policy, contract, or plan purchaser, payer, and third-party administrator consent to the waiver.

Section 63-9-239. Neither an applicant for a license nor a naturopathic physician shall be judged by the standards of any other medical profession when appearing before the state board of naturopathic medicine pursuant to an adjudication hearing conducted.

Section 63-9-240. Each naturopathic physician shall inform the state board of naturopathic medicine if the naturopathic physician pleads guilty or no contest to, or is found guilty of, any criminal offense that constitutes grounds for action against the naturopathic physician under § 63-9-237.

Section 63-9-241. The sealing of conviction records shall have no effect on a prior action the state board of naturopathic medicine took under § 63-9-237 or on the board's authority to complete action under that section initiated before the sealing of the conviction records.

Section 63-9-242.

(a) A naturopathic physician's license is automatically suspended as of the date the naturopathic physician pleads guilty to, or is found guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction for either of the following:

(1) In this state, murder, voluntary manslaughter, aggravated assault, kidnapping, rape, sexual battery, aggravated sexual battery, aggravated arson, aggravated robbery, or aggravated burglary; or

(2) In another jurisdiction, any criminal offense substantially equivalent to those specified in subdivision (a)(1).

(b) A naturopathic physician who practices naturopathic medicine after the naturopathic physician's license is suspended pursuant to subsection (a) is practicing naturopathic medicine without a valid license.

(c) On determination that a naturopathic physician's license has been suspended pursuant to subsection (a), the state board of naturopathic medicine shall commence the process of revoking the license.

Section 63-9-243.

(a) If the secretary and supervising member of the state board of naturopathic medicine determine that there is clear and convincing evidence that there are grounds to take action against a naturopathic physician under § 63-9-237(b)(2)(A) or (B) or (b)(3)(B) and that the naturopathic physician's continued practice presents a danger of immediate and serious harm to the public, the members may recommend that the board suspend the naturopathic physician's license without a prior hearing. Written allegations shall be prepared for consideration by the board members.

(b) The board, on review of the allegations and by a vote of not fewer than four (4) of its members, may suspend the naturopathic physician's license without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and

taking the vote. If the board suspends the naturopathic physician's license without a prior hearing, the board shall send to the naturopathic physician notice of the suspension.

(c) The suspension shall remain in effect until the board's final adjudicative order issued becomes effective unless the board fails to issue its final adjudicative order within sixty (60) days after completion of the adjudication hearing under that §. Failure to issue the final adjudicative order within that time shall result in dissolution of the suspension, but shall not invalidate any subsequent, final adjudicative order.

Section 63-9-244. For purposes of § 63-9-237(b)(2)(A) and (B) and (b)(3)(B), the commission of the act may be established by a finding by the state board of naturopathic medicine, pursuant to an adjudication that the applicant or naturopathic physician committed the act in question.

Section 63-9-245. The state board of naturopathic medicine may not take action against an applicant for a license or a naturopathic physician under § 63-9-237(b)(2)(A) or (B) or (b)(3)(B) if the trial court renders a final judgment in the applicant's or naturopathic physician's favor and that judgment is based on an adjudication on the merits. The board may take such action if the trial court issues an order of dismissal on technical or procedural grounds.

Section 63-9-246. If the state board of naturopathic medicine takes action against an applicant for a license or a naturopathic physician under § 63-9-237(b)(2)(A) or (B) or (b)(3)(B) and the finding of guilt or plea of guilt or no contest is overturned on appeal, on exhaustion of the criminal appeal, the applicant or naturopathic physician may petition the board for reconsideration of the board's action against the applicant or naturopathic physician. Appropriate court documents shall accompany the petition. On receipt of such a petition and court documents from a naturopathic physician, the board shall terminate the action against the naturopathic physician, including reinstating the license if it was suspended or revoked. On

receipt of such a petition and court documents from an applicant for a license, the board shall resume the determination of whether the applicant meets the requirements for the license.

Section 63-9-247.

(a) If the state board of naturopathic medicine has reason to believe that an applicant for a license or a naturopathic physician is unable to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the board by reason of mental or physical illness or habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to practice, the board may compel the applicant or naturopathic physician to submit to a mental examination, physical examination, or both. The examination shall be at the expense of the applicant or naturopathic physician and conducted by a physician or, if the alleged impairment is due to habitual or excessive use or abuse of drugs, alcohol, or other substances, a physician or treatment provider. The physician or treatment provider who conducts the examination shall be a person who is qualified to conduct the examination and shall be chosen by the board. Failure to submit to the examination constitutes an admission of the allegations against the applicant or naturopathic physician unless the failure is due to circumstances beyond the applicant's or naturopathic physician's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

(b) If the board determines that the applicant's or naturopathic physician's ability to practice is impaired by reason of mental or physical illness, the board may require the applicant or naturopathic physician to submit to care, counseling, or treatment as a condition of the board issuing, continuing, or reinstating a license. The care, counseling, or treatment shall be provided by a physician qualified to provide it who is approved by the board. If the board denies or suspends the license and the applicant or naturopathic

physician submits to the care, counseling, or treatment, the board shall afford the applicant or naturopathic physician an opportunity to demonstrate the ability to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the board. The board may issue or reinstate the license if the applicant or naturopathic physician successfully demonstrates the ability to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the board.

(c)

(1) If the board determines that the applicant's or naturopathic physician's ability to practice is impaired by reason of habitual or excessive use or abuse of drugs, alcohol, or other substances, the board shall deny or suspend the license and require the applicant or naturopathic physician to submit to treatment as a condition of issuance or reinstatement of the license. The board shall afford an applicant or naturopathic physician who submits to treatment an opportunity to demonstrate the ability to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the board. The demonstration shall include all of the following:

(A) Certification from a treatment provider approved by the board that the applicant or naturopathic physician has successfully completed the treatment;

(B) Evidence of continuing full compliance with an aftercare contract or consent agreement; and

(C) Two (2) written reports indicating that the applicant's or naturopathic physician's ability to practice has been assessed and that the applicant or naturopathic physician has been found able to practice

naturopathic medicine according to acceptable and prevailing standards of care approved by the board. The reports shall be made by individuals approved by the board for making such assessments and shall describe the basis for the determination.

(2) The board may issue or reinstate the license if the applicant or naturopathic physician successfully demonstrates in accordance with subdivision (c)(1) that the applicant or naturopathic physician is able to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the board and enters into a written consent agreement. If the board issues or reinstates the license, the board may require the applicant or naturopathic physician to do all of the following pursuant to the board's continued monitoring of the applicant or naturopathic physician:

(A) Comply with the written consent agreement;

(B) Comply with any conditions the board imposes after a hearing;

(C) For both of the two (2) years following termination of the consent agreement, submit to the board written progress reports made under penalty of perjury stating whether the applicant or naturopathic physician has maintained sobriety.

Section 63-9-248.

(a) Any person may report to the state board of naturopathic medicine in a signed writing any evidence the person has that appears to show either of the following:

(1) A violation of § 63-9-202; or

(2) Grounds for taking action under § 63-9-236 or 63-9-237 against an applicant for a license or a naturopathic physician.

(b) In the absence of bad faith, a person who reports evidence to the board under this section or testifies before the board in an adjudication hearing conducted shall not be liable for civil damages as a result of the report or testimony.

Section 63-9-249.

(a) The state board of naturopathic medicine shall conduct an investigation when it receives or otherwise has evidence appearing to show either of the following:

(1) A violation of § 63-9-202; or

(2) Grounds for taking action under § 63-9-236 or 63-9-237 against an applicant for a license or a naturopathic physician.

(b) The board shall assign a case number to and make a record of each investigation. The board's supervising member shall supervise the investigations unless the board's president designates another board member to supervise an investigation in place of the supervising member. No member of the board who supervises an investigation shall participate in further adjudication of the case.

Section 63-9-250.

(a) For the purpose of an investigation conducted under § 63-9-249, the state board of naturopathic medicine may administer oaths, order the taking of depositions, issue subpoenas to compel the attendance of witnesses, and issue subpoenas duces tecum to compel the production of books, accounts, papers, records, and documents. Except in the case of an investigation into whether there are grounds to take action against an applicant for a license or naturopathic physician under § 63-9-237(b)(2)(A) or (B) or (b)(3)(B), the board may issue a subpoena duces tecum to compel the production of patient record information only after consulting with the legal counsel of the division of health-related boards and receiving the approval of the board's secretary and supervising member and a member of the board who is a naturopathic physician. The

three (3) board members may approve the subpoena duces tecum only after determining that there is probable cause to believe the patient record information is material to the investigation and covers a reasonable period of time relevant to the matter being investigated.

(b) On failure to comply with any subpoena or subpoena duces tecum issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Tennessee Rules of Civil Procedure.

Section 63-9-251. On determination pursuant to an investigation under § 63-9-249 that there is probable cause to believe a person is violating § 63-9-202, the state board of naturopathic medicine shall report the violation to the district attorney general of the county in which the violation is occurring. On receipt of the report, the district attorney general shall cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner provided by law.

Section 63-9-252. The state board of naturopathic medicine may apply to any court with competent jurisdiction in the county in which a violation of § 63-9-202 is occurring for an injunction restraining any person from the violation.

Section 63-9-253.

(a) Each year, the state board of naturopathic medicine shall prepare a report that documents the disposition of all investigations conducted under § 63-9-249 during the preceding twelve (12) months. The report shall contain both of the following:

(1) For each completed investigation, all of the following information:

(A) The case number assigned to the investigation;

(B) An explanation of the reasons the investigation was conducted; and

(C) The disposition of the investigation.

(2) The number of investigations that are still pending.

(b) The board shall prepare the reports in a manner that protects the identity of each person involved in each investigation. The reports are a public record under title 10, chapter 7.

Section 63-9-254. Proceedings and records of the state board of naturopathic medicine regarding an investigation conducted under § 63-9-249 shall be held in confidence and shall not be subject to discovery or introduction in evidence in any civil action against a naturopathic physician or naturopathic medical college arising out of matters that are the subject of the investigation. No person in attendance at a meeting regarding the investigation or board member shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the investigation or as to any finding, recommendation, evaluation, opinion, or other action of the board or a board member. Information, documents, or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were presented during proceedings of the investigation nor should any person testifying before the board or serving on the board be prevented from testifying as to matters within the person's knowledge, but the witness cannot be asked about the witness' testimony before the board or opinion formed by the witness as a result of the investigation.

Section 63-9-255. The state board of naturopathic medicine shall not make identifying information about a patient public unless the patient or patient's representative consents to the board making the identifying information public. No such consent is required, however, if the board possesses reliable and substantial evidence that no bona fide naturopathic physician-patient relationship exists.

Section 63-9-256.

(a) Any insurer providing professional liability insurance to any person holding a valid license to practice naturopathic medicine issued pursuant to this part, or any other entity that seeks to indemnify the professional liability of any person holding a valid license to practice naturopathic medicine issued pursuant to this part shall notify the state board of naturopathic medicine within thirty (30) days after the final disposition of any written claim for damages where such disposition results in a payment exceeding thirty-five thousand dollars (\$35,000). Such notice shall contain the following information:

- (1) The name and address of the person submitting the notification;
- (2) The name and address of the insured who is the subject of the claim;
- (3) The name of the person filing the claim;
- (4) The date of final disposition; and
- (5) If applicable, the identity of the court in which the final disposition of the claim took place.

(b) On the basis of the reporting provisions in this section, the board may investigate possible violations of this part or a rule adopted under it. The board may also investigate repeated malpractice. As used in this subsection, "repeated malpractice" is three (3) or more claims for naturopathic medical malpractice within the previous five-year period, each resulting in a judgment or settlement in excess of thirty-five thousand dollars (\$35,000) in favor of the claimant, and each involving negligent conduct by the naturopathic physician.

(c) All summaries, reports, and records received and maintained by the board pursuant to this section shall be held in confidence and shall not be subject to discovery or introduction in evidence in any state civil action involving a health care professional or facility arising out of matters which are the subject of such reporting to the board. The

board may only use the information obtained as the basis for an investigation, as evidence in a disciplinary hearing against the license holder, or in any subsequent trial or appeal of a board action or order.

(d) A copy of any reports or summaries received by the board pursuant to this section shall be sent to the license holder or to the license holder's legal counsel by the board. The license holder shall have the right to file a statement with the board concerning the correctness or relevance of the information. Such statement shall at all times accompany that part of the record in contention.

(e) In the absence of fraud or bad faith, no professional association of individuals authorized to practice naturopathic medicine under this part that sponsors a committee or program to provide peer assistance to practitioners with substance abuse problems, no representative or agent of such a committee or program, and no member of the state board of naturopathic medicine shall be held liable in damages to any person by reason of actions taken to refer a practitioner to a treatment provider for examination or treatment.

Section 63-9-257. Whoever violates § 63-9-202 is guilty of a Class E felony on a first offense and a Class D felony on each subsequent offense.

Section 63-9-258. A naturopathic physician shall not testify concerning any of the following made or given as part of the practice of naturopathic medicine:

- (1) A communication a patient makes to the naturopathic physician;
- (2) Advice the naturopathic physician gives to a patient; or
- (3) A communication a licensed health professional makes to the naturopathic physician in regard to a patient.

SECTION 3. Tennessee Code Annotated, Section 4-29-229(a), is amended by adding the following as a new item to be appropriately designated:

() Board of naturopathic medicine;

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2006, the public welfare requiring it.